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Mr Boyle PLI

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

*[Protest Against Exclusion From Competition]*

FILE: B-198876

DATE: October 3, 1980

MATTER OF: The Computer Company

**DIGEST:**

In order to comply with obligation to obtain maximum competition, GAO recommends that protester be given second attempt to successfully complete benchmark because record does not support conclusion that software was inadequate and most conclusive method to determine capability is by demonstration in benchmark.

The Computer Company (TCC) protests its exclusion from the competition for the award of a contract by the Department of Energy (DOE) for a computer based message service. The procurement is assigned General Services Administration (GSA) control No. RW-80-0661 and is to be accomplished through GSA's Teleprocessing Services Program (TSP), Multiple Award Schedule Contracts, the mandatory means by which Federal agencies acquire teleprocessing services from the private sector. DOE contends that TCC was properly excluded from the competition for failure to demonstrate complete technical acceptability in the benchmark. We find merit in TCC's protest and recommend that DOE give TCC another opportunity to demonstrate technical acceptability.

DOE announced its requirements in the Commerce Business Daily. TCC and other vendors submitted proposals, which indicated technical compliance with DOE's requirements. Each of the vendors was permitted to demonstrate technical capability to meet the more than 30 DOE mandatory requirements in a benchmark test. On May 8, 1980, DOE technical personnel conducted TCC's benchmark test. TCC failed to demonstrate one required command "to compose a reply without creating a new message address." By letter dated June 3, 1980, TCC was notified of its failure, as follows:

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"Your system did not demonstrate a reply capability. Your operator issued the CONFIRM command and the message number. Your system generated a new message confirmed by User 2. User 3 Agenda for Meeting. However, your operator never entered the reply text, 'Agenda is fine, see you at noon' \* \* \*."

After TCC protested, DOE reviewed TCC's technical manuals but could not find any reference to a "REPLY" command; thus, DOE concluded that TCC's failure resulted from software inadequacy and not an operator error.

TCC contends that its software has the required "REPLY" command and that it could have demonstrated it at the benchmark if DOE would have pointed out its deficiency at that time. TCC explains that its operator should have used the "REPLY" command instead of the "CONFIRM" command, but that the error could have been corrected on the spot if the cognizant DOE technical representative had been present during this portion of the benchmark.

DOE refers to GSA's guidance concerning benchmarking, which instructs that a second benchmark should be allowed for these failures: machine-dependent conversion errors, power failure, equipment or communication line failure, and system software failure. DOE explains that since none of these conditions were present, DOE decided not to give TCC a second benchmark opportunity.

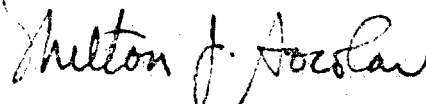
We note that GSA's benchmarking guidelines also state that a vendor should not be automatically denied a second benchmark if a non-machine-dependent change appears on the initial benchmark. The guidelines also state that if agency evaluators discover that a vendor's first benchmark contains a number of non-machine-dependent changes, the vendor should be disqualified only if its benchmark contains an unreasonable number of such changes; otherwise, the vendor should be permitted to conduct a second benchmark. Finally, the guidelines also state that the vendor should be notified of any failure at the completion of the benchmark.

We recognize that neither GSA's guidance nor an express DOE commitment guaranteed any participant a second benchmark attempt. See ADP Network Services, Inc., B-196286, May 12, 1980, 80-1 CPD 339. We note that TCC admits that it did not demonstrate the "REPLY" command, as required, and thus TCC did not successfully complete the benchmark on its first attempt.

The question for our consideration is whether it was proper for DOE to disqualify TCC from the competition for its failure to demonstrate compliance with one of more than 30 mandatory requirements, where TCC contends that its failure resulted from operator error. In the circumstances, we do not believe that DOE met its duty to obtain maximum practicable competition in excluding TCC from the competition. See Federal Procurement Regulations § 1-1.301 (1964 ed. amend. 83). In our view, DOE's determination to disqualify TCC is not supported by its post-protest search of TCC's technical manual to ascertain whether TCC had a "REPLY" command since the proper and most conclusive method to determine whether TCC possesses the technical capability to satisfy the mandatory "REPLY" requirement is to permit TCC a second benchmark attempt. We are persuaded by (1) TCC's insistence that its system can meet the requirement and that it could have been so demonstrated on May 8, 1980, if the omission was pointed out by DOE personnel on the spot, as suggested by GSA's benchmarking guidelines, and (2) TCC's successful demonstration that its system met all other technical requirements.

The protest is sustained.

Therefore, we recommend that DOE permit TCC to attempt the benchmark a second time in accord with GSA's benchmarking guidelines. By letter of today, our recommendation is being forwarded to the Secretary of Energy.



For the Comptroller General  
of the United States